

SPECIAL USE PERMIT

FILE NO.	SP19-014
LOCATION OF PROPERTY	411 Pamlar Avenue
ZONING DISTRICT	R-1-5 Single-Family Residence
GENERAL PLAN DESIGNATION	Residential Neighborhood
PROPOSED USE	Special Use Permit to allow maximum square footage of accessory buildings (built without the benefit of permits), to exceed 650 square feet, in the rear yard of a single-family residence on a 0.21-gross acre site
ENVIRONMENTAL STATUS	Exempt pursuant to CEQA Guidelines Section 15303 for New Construction or Conversion of Small Structures
OWNER/APPLICANT ADDRESS	Michaelle Barbaccia 411 Pamlar Avenue San José, CA 95128
ARCHITECT/ADDRESS	Mark Bayog 226 Everson Drive Santa Cruz, CA 95060

The Director of Planning, Building, and Code Enforcement finds that the following are the relevant facts and findings regarding this proposed project:

1. **Project Description.** This Special Use Permit allows the maximum square footage of accessory buildings, (built without the benefit of permits), to exceed 650 square feet in the rear yard of a single-family residence on a 0.21-gross acre site. The project includes legalizing existing accessory buildings built without permits and rectifying code violation number 201713136. The changes include interior modifications to an existing 500 square foot accessory dwelling unit (ADU) with attached 360-square foot garage and bringing it into code compliance, removing 140-square foot shed which is encroaching into an existing five-foot wide public utility easement area, and modifying an existing detached accessory building and restricting it to two plumbing fixtures.
2. **Site Description and Surrounding Uses.** The subject site is located on the north side of Pamlar Avenue, approximately 280 feet east of Highway 17, at 411 Pamlar Avenue. The site is currently developed with a single-family residence and 1,664 square feet of total accessory buildings in the rear yard. The site is surrounded by single-family residences in all directions.

3. **General Plan Conformance.** The subject site has a designation of Residential Neighborhood on the Envision San José 2040 General Plan Land Use/Transportation Diagram. This designation is intended for residential development consistent with the character of the surrounding neighborhood. The project is consistent with this designation, in that it is similar to the existing character and pattern of detached accessory buildings and accessory dwelling units (ADUs) located in the rear yard of the residences in the neighborhood.
4. **Zoning Code Compliance.** The subject site is located in the R-1-5 Single Family Residence Zoning District.

Under the provisions of Section 20.30.500 of the San José Municipal Code, residential properties are permitted to have a maximum of 650 square feet for accessory buildings and structures. However, this square footage may be increased pursuant to a Special Use Permit as provided in Chapter 20.100, Part 7. The proposed project would result in approximately 700 square foot of accessory buildings and 515 square foot ADU with a 360-square foot attached garage, for a total of 1,560-square foot accessory buildings thereby, requiring a Special Use Permit. The project is consistent with the regulations of the Zoning Ordinance in the following manner:

Use. Accessory buildings which serve primary residences are allowed as unconditioned accessory uses in the R-1-5 Single Family Residence Zoning District. The modified 500-square foot accessory building will be used for storage and as a workshop but will not be used for living purposes and will not have more than two plumbing fixtures-as noted on the approved plans. A single accessory dwelling unit (ADU) is allowed on residential R-1 lots with one single-family residence.

Setbacks

Accessory Building: The 500-square foot accessory building located on the northwest rear corner of the site is approximately 5.5-foot from the rear (north) property line and 5-foot from the interior side (west) property line, where zero setbacks are required. The accessory building is set back approximately 100 feet from the front property line facing Pamilar Avenue, consistent with the minimum front setback requirement of 60 feet for detached accessory structures.

ADU and Garage: The combined 906 square foot ADU with attached garage is set back more than 80 feet from the front property line facing Pamilar Avenue, where 60 feet is the requirement, and is located behind the primary building. The one-story building will be two feet from east side and 9 feet from rear property lines, where no minimum interior side or rear setbacks required, in conformance with the minimum setback requirement per the Zoning Ordinance.

Height

Accessory Building: Pursuant to Section 20.30.530, the maximum height of an accessory building with a sloped roof may exceed twelve feet provided the height halfway up any slope of a pitched, gable, or hip roof does not exceed twelve feet and no portion of the accessory building exceeds a maximum height of sixteen feet. The proposed accessory building is approximately 11.10 feet in height as measured at the midpoint of the pitched roof slope and is approximately 15.6 feet in height as measured at the roof peak, consistent with the height limits for accessory buildings.

ADU and Garage: The ADU will have an overall height of 13.3 feet, where 18 feet is the maximum allowable height. The garage is approximately 10 feet in height as measured at the midpoint of the pitched roof slope and is approximately 13.4 feet in height as measured at the roof peak, consistent with the height limit for accessory buildings.

Rear Yard Coverage. The cumulative total rear yard coverage cannot exceed 40 percent. The cumulative total floor area of 1,606-square feet in accessory buildings, (960-square foot ADU and garage, 500-square foot accessory building and 175-square foot shed), will have a rear yard coverage of 30%, where the rear yard area is 5,356 square feet, which conforms to the 40% maximum allowed cumulative total rear yard coverage for accessory buildings.

5. **Environmental Review.** The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties. Section 15303(e) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA) exempts accessory structures.
 - a. The proposed accessory buildings, including ADU with attached garage, are considered accessory to the primary single-family residence on-site. The project is not anticipated to have any negative effect as it is not intensifying the existing use.
6. **Special Use Permit Findings.** Chapter 20.100 of Title 20 of the San José Municipal Code establishes required findings for issuance of a Special Use Permit, which findings are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.
 - a. The Special Use Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and Area Development Policies; and
Analysis: This Special Use Permit is consistent with the site's Envision San José 2040 General Plan Land Use/Transportation Diagram designation of Residential Neighborhood, in that the proposed modifications to the accessory buildings will not change the residential character of the existing neighborhood, as discussed above. The proposed accessory buildings are not subject to any Specific Plan or Area Development Policy.
 - b. The Special Use Permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and
Analysis: As stated above, the accessory buildings will be modified to be consistent with code regulations in terms of location on site, height, setbacks, and rear yard coverage in order to be in compliance with the Zoning Ordinance.
 - c. The Special Use Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and
Analysis: The accessory buildings are not subject to any applicable City Council Policies.
 - d. The proposed use at the location requested will not:

- i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
- ii. Impair the utility or value of property of other persons located in the vicinity of the site; or
- iii. Be detrimental to public health, safety, or general welfare; and

Analysis: The accessory buildings remain subordinate to the main residence in height and form and are located to the rear of the main residence. An ADU with two-car attached garage (960 square feet) is located approximately two feet from the northeast side property line and an existing 500-square foot accessory building is approximately five feet from rear and northwest side property lines and will be used as a workshop and for storage. The rear yard has an existing 175 square foot storage shed as well. These are typical uses in the rear yards of single-family residences in residential neighborhoods, thereby preserving the residential character of the neighborhood and site. The accessory structures will not deteriorate the peace, health, and safety, morals, or welfare of the surrounding area as they are in the rear yard of the property and will maintain the character of similar pattern of detached accessory structures in the neighborhood.

- e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; and

Analysis: The site is adequate in size and shape for the accessory buildings to meet the required development standards. The structures will undergo modifications to become code compliant. The project proposes to remove 140-square of shed area to the rear of the ADU and attached garage, which is currently encroaching into the five-foot public utility easement. The existing garage walls will be aligned with removal of 44 square feet of corner area and the ADU will be reconfigured to accommodate one bedroom/one bath floor space. The rear yard area is approximately 5,536 square feet and the cumulative coverage of the accessory buildings is 30%, which is within the maximum 40% total coverage allowed for all accessory buildings in the rear yard.

- f. The proposed site is adequately served:
 - i. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - ii. By other public or private service facilities as are required.

Analysis: The subject property has vehicular driveway from Pamilar Avenue. The proposed accessory buildings would not create additional traffic on site.

In accordance with the findings set forth above, a Special Use Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
 - a. Acceptance of the Permit by the applicant; and
 - b. Agreement of the applicant to be bound by, to comply with, and do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such permit.
2. **Permit Expiration.** This Permit shall automatically expire two years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment/Amendment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment/Amendment must be approved prior to the expiration of this Permit.
3. **Sewer Connection Fees.** A fee in the amount of **\$6,048.00** is due as the property submitted for a Septic Tank Abatement to allow connection to the existing sanitary lateral (Building Permit #18-126504 RS). This fee will be required to be paid prior to the issuance of Building permits.
4. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions.
5. **Conformance with Plans.** The development of the site shall conform to the approved Special Use Permit plans entitled, "ADU/Accessory Structure Compliance for Michaelle Barbaccia," 411 Palmlar Avenue, San Jose, CA 95128, dated last revised October 19, 2019, on file with the Department of Planning Building and Code Enforcement.
6. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
7. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
8. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
9. **Building Materials.** All building materials are to be those specified on the Approved Plan Set.

10. **Hours of Construction.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
11. **Garage Parking Spaces for Residential Projects.** All garage parking spaces on the approved Special Use Permit plans are to be used only as such and should be kept free and clear of all obstructions.
12. **Accessory Buildings.** The proposed accessory buildings shall not contain living spaces or sleeping quarters and shall be limited to two plumbing connections to serve an appliance or fixture, and unconditioned space as defined in Title 24 of the San José Municipal Code.
13. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance.
14. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend buildings, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
15. **Public Works Clearance for Building Permit(s):** Prior to the issuance of Building permits the applicant will be required to have satisfied all the Public Works conditions, as applicable.
 - a. **Transportation:**
 - i. This project does not require a CEQA transportation analysis because the project is expected to result in less than significant VMT impacts based on Table 1 (Screening Criteria for CEQA Transportation Analysis for Development Projects) of the Transportation Analysis Handbook 2018, (small infill projects: single-family detached residential Projects of 15 or fewer dwelling units & local-serving retail: commercial projects up to a combined total of 100,000 gross square feet).
 - ii. The project is required to provide an operations summary for the proposed Doggie Care business. Additional traffic requirements may be required.
 - b. **Grading/Geology:**
 - i. A grading permit may be required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4 foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed engineered design alternative for Public Works discretionary approval and must be designed to convey a 10-year storm event.

- iii. A soils report may be required to be submitted to and accepted by the City prior to the issuance of a grading permit. This report should include, but is not limited to: foundation, earthwork, utility trenching, retaining and drainage recommendations.
 - c. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures and source controls to minimize stormwater pollutant discharges.
 - d. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
 - e. **Flood Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
 - f. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 - g. **Parks:** This residential project is subject to the payment of park fees in-lieu of land dedication under either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code).
 - h. **Sanitary:** The project is located in the City's Sanitary Extension Program where the City constructed the sanitary main and sanitary lateral along the Pamilar Avenue project frontage. A fee in the amount of **\$6,048.00** is due as the property submitted for a Septic Tank Abatement to allow connection to the existing sanitary lateral (Building Permit #18-126504 RS). This fee will be required to be paid prior to the issuance of Building permits.
16. **Building Clearance for Issuing Permits.** Prior to issuance of a building permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* The permit file number, **SP19-014**, shall be printed on all construction plans submitted to the Building Division.
 - b. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permit and applicable conditions.
17. **Fire Clearance for Building Permits.** Prior to the issuance of Building permits the applicant will be required to have satisfied all the Fire conditions, as applicable.
18. **Revocation, Suspension, Modification.** This Special Use Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Special Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or

- b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- c. The use as presently conducted creates a nuisance.

APPROVED and issued on this **11th of December 2019.**

Rosalynn Hughey, Director
Planning, Building, and Code Enforcement

Deputy

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